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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. Nos: D- 42 and 44 of 2012, and
Crl. B.A. No. D- 03 of 2013.

| | |
|-----------------|-------------------------------|
| Date of hearing | Order with signature of Judge |
| 26.02.2013. | |

Present:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Syed Muhammad Farooq Shah.

Mr. Habibullah Ghouri, Advocate for applicants.
Mr. Altaf Hussain Surahyo, Advocate for complainant.
Mr. Imtiaz Ali Shahani, State Counsel.

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**Syed Muhammad Farooq Shah, J:** This common order shall dispose of all the above captioned bail applications filed separately, arising out of the case Crime No.39/2010, registered at P.S Golo Dari, (District Shikarpur), for offences punishable under Sections 302, 324, 452, 436, 148, 149 P.P.C, Section 17 (3) of the Offence Against Property (Enforcement of Hudood), Ordinance, 1979, and under Section 6 & 7 of Anti Terrorism Act, 1997.

2. Arguments advanced by learned counsel for the parties have been considered and relevant record has also been perused.

3. Mr. Habibullah Ghouri, representing the applicants/accused at the very outset contended that no specific allegation has been leveled against the applicants in the F.I.R, no firing is alleged to have been resorted to the applicants and no role whatsoever in robbing or burning has been specifically stated against them. Learned counsel pressed the bail to the applicants on the main ground of rule of consistency, except to

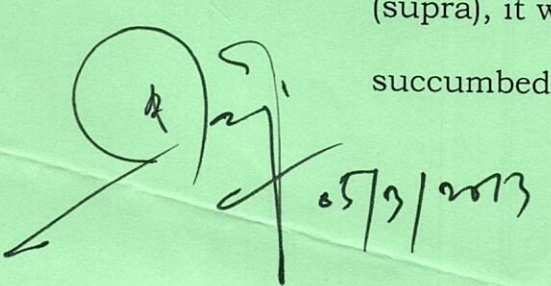
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applicant Asghar, who has been shown armed with T.T pistol and latter part of the F.I.R reveals that he used Kalashnikov in commission of the offence. According to learned counsel in similar circumstances and facts co-accused Sanaullah was granted bail by this Court vide order dated 22.10.2011, and bail was also acceded to another co-accused Sikander on 04.5.2012. Learned counsel submitted at the bar that both mentioned orders, whereby the bail was granted to co-accused named above have not been challenged before the Apex Court, therefore, the same have attained finality.

4. Conversely, Mr. Altaf Hussain Surahyo, representing complainant assisted by learned State Counsel vehemently opposed the bail to the applicants and relied upon cases of *Zahid Shah v. The State* (2001 P.Cr.L.J 134), *Shahid Farooq v. The State* (2011 S C M R 1619), *Ghulam Nabi v. The State* (1996 S C M R 1023), *Muhammad Bashir v. The State* (2000 S C M R 78), *Inayat v. The State* (2002 S C M R 129), and case of *Qazi Daood v. Qazi Muhammad Faheem* (1989 S C M R 238).

5. The citations (as mentioned above) relied upon by learned counsel for the complainant are not attracting in the peculiar facts and circumstances of the present as in the case of *Zahid Shah* (supra), specific role of causing injury with firearm weapon was attributed to the accused. In the case of *Shahid Farooq* (supra), it was observed that one of the victim of the assault who succumbed to the injuries and died later on specifically named

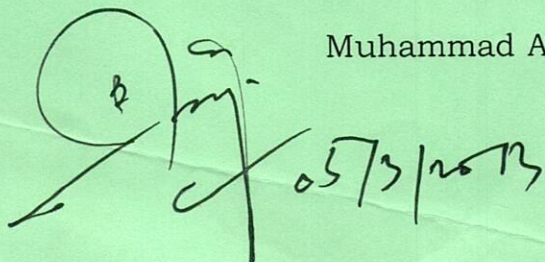
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the accused and in this cited case the trial was commenced and nine witnesses were examined. In the case of Ghulam Nabi (supra), the accused allegedly advanced threats that whosoever came near would be done away with. In the case of Muhammad Bashir (supra), accused had allegedly made firing with carbine at the time of occurrence, whereby a prosecution witness was injured. In the case of Inayat (supra), accused was alleged to have fired at the eyewitnesses and caused them injuries. In the case of Qazi Dawood v. Qazi Muhammad Faheem (Supra), petitioner Jarro (accused) fired an effective pistol shot.

6. Perusal of the record transpires that no specific role has been assigned to the applicants, except applicant Asghar, to whom specific role of causing fire shots has been assigned with Kalashnikov; it is immaterial as to whether he was armed with pistol or with Kalashnikov, but specific allegation of causing fire shots has been alleged, therefore, his case is not at par to that of other applicants/accused and he is therefore, not entitled for concession of bail.

7. So far as bail to remaining applicants is concerned, we reached at the conclusion that keeping in view the bail granted to co-accused Sanaullah and Sikander, their case is also on same footings. They have not been assigned any specific role in commission of the alleged offence, therefore, circumstances of the case and rule of consistency called for further probe into the case as envisaged in Section 497 (2) Cr.P.C. Admittedly, two co-accused with the similar allegations have already been granted bail by this Court, therefore, in the circumstances, applicants Muhammad Ashraf, Dil Murad, Shah Nawaz, Qaloo, Sher Khan,

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Saddar, Nadir, Fazul-ur-Rehman, Sulleman, and Bilawal are granted bail subject to their furnishing solvent surety in the sum of Rs.300,000/- (Three hundred thousands) each and P.R bond in the like amount to the satisfaction of the trial Court. However, the bail to applicant Asghar is declined.

8. All captioned applications are decided in the term and manner indicated above.

Dated: 05-3-2013

Judge

Judge  
05/3/2013

1. D orders on M.A. No. 880/13 (9/1A)
2. D orders on M.A. No. 881/13 (9/15B-A)